

Message

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**From:** Palich, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=330AD62E158D43AF93FCBBECE930D21A-PALICH, CHR]  
**Sent:** 10/4/2018 8:25:29 PM  
**To:** Administrator's Email / Ex. 6 [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f061a85b2e14828934c1a85cc4d5122 Administrator's Email / Ex. 6]  
**CC:** Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]  
**Subject:** QFR's from 8/1 EPW  
**Attachments:** 2018.10.03 - EPA MANAGEMENT REVIEW - ALL Wheeler QFRs 08.01.2018.docx; Administrator Wheeler SEPW Hearing QFR - Attachment - Question 52b - EPCRA EMISSIONS REPORTING response.pdf; Administrator Wheeler SEPW Hearing QFR - Attachment - Question 73b - Wehrum Recusal - 08.01.2018.pdf; Attachment Wheeler SEPW Hearing QFR - Attachment - Question 59a - 2018 08 24 LeanTrack Inventory.xls.xlsx

Hi Administrator,

Hope the west coast trip is going well. Attached are the final cleared QFR's and attachments from OMB for your review and sign off. Once you give me the thumbs up they will go to EPW.

If you have any questions let me know and have a terrific long weekend.

Best Regards,

Christian R. Palich  
*Deputy Associate Administrator*  
*Office of Congressional & Intergovernmental Affairs*  
*U.S Environmental Protection Agency*  
*O: 202.564.4944*  
*C: Personal Matters / Ex. 6*  
*E: Palich.Christian@epa.gov*

## Message

**From:** Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFD6B0FEA4B998-TRAYLOR, PA]  
**Sent:** 7/6/2018 9:37:38 PM  
**To:** Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**CC:** Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]  
**Subject:** RE: Final NAA Request  
**Attachments:** Glider No Action Assurance (Draft, July 6, 2018).docx

Here is our draft no action assurance.

**Patrick Traylor**

Deputy Assistant Administrator  
 Office of Enforcement and Compliance Assurance  
 U.S. Environmental Protection Agency  
 (202) 564-5238 (office)  
 (202) 809-8796 (cell)

---

**From:** Wehrum, Bill  
**Sent:** Friday, July 6, 2018 5:15 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Traylor, Patrick <traylor.patrick@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>  
**Subject:** RE: Final NAA Request

Susan – Here's a revised final version that corrects typos and conforms the first paragraph to the last (first now says "... rulemaking in which we will consider extending ...". As we just discussed, we cannot communicate finality on the extension before completing the extension rule.

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Bill Wehrum  
 Assistant Administrator  
 Office of Air and Radiation  
 U.S. Environmental Protection Agency  
 (202) 564-7404

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**From:** Wehrum, Bill  
**Sent:** Friday, July 6, 2018 4:49 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Traylor, Patrick <traylor.patrick@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Harlow, David <harlow.david@epa.gov>  
**Subject:** Final NAA Request

Susan – Attached is a final version of our NAA request.

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Bill Wehrum

Assistant Administrator

Office of Air and Radiation

U.S. Environmental Protection Agency

(202) 564-7404



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

July 6, 2018 [draft]

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

**FROM:** Susan Parker Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance

**TO:** Bill Wehrum  
Assistant Administrator  
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a “no action assurance” relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA’s having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were “new motor vehicles” (and glider vehicle engines to be “new motor vehicle engines”) within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer’s highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564-4014, or [kelley.rosemarie@epa.gov](mailto:kelley.rosemarie@epa.gov).

Attachment

cc: Byron Bunker, OAR, OTAQ  
Rosemarie Kelley, OECA, OCE  
Phillip Brooks, OECA, OCE, AED

Message

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**From:** Shiffman, Cari [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=645F74D11EEC4EBA9337CB5734AD6098-SHIFFMAN, CARI]  
**Sent:** 7/20/2018 10:11:38 PM  
**To:** Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfd6b0fea4b998-Traylor, Pa]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]  
**Subject:** RE: Gliders - Attorney General of Minnesota

In the body, I meant Minnesota.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Mobile: (202) 823-3277

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**From:** Shiffman, Cari  
**Sent:** Friday, July 20, 2018 6:03 PM  
**To:** Traylor, Patrick <traylor.patrick@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>  
**Subject:** Gliders - Attorney General of Minnesota

Another incoming request from the Attorney General of Rhode Island for a withdrawal or stay of the glider NAA.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Mobile: (202) 823-3277

## Message

**From:** Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]  
**Sent:** 12/28/2018 12:46:52 PM  
**To:** Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]  
**CC:** Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]  
**Subject:** RE: AW SEPW QFR Updates - OAR  
**Attachments:** 2018.10.04 - EPA MANAGEMENT REVIEW - FINAL OMB REVIEW - ALL Wheeler QFRs 08.01.2018 BH+jl.docx

Christian,

Attached are the revised QFRs, reflecting work done by Josh Lewis and Ben Hengst to update them per the Acting Administrator's request.

My apologies for only now providing these to you. Working with Ben, Josh had quickly gotten the QFRs updated last week and had forwarded them to me this past Friday afternoon. After all that, in the rush to call it a week, I then forgot to pass them along to you all.

I'll be here all day. Don't hesitate to call/email if you have any questions or if something comes up regarding this. Thanks.

**David S. Harlow**  
**Senior Counsel**  
**Immediate Office of the Assistant Administrator**  
**Office of Air and Radiation, USEPA**  
**WJC-N Room 5409K**  
**1200 Pennsylvania Avenue NW**  
**Washington, DC 20460**  
**202-564-1233**  
[Harlow.David@epa.gov](mailto:Harlow.David@epa.gov)

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**From:** Palich, Christian

**Sent:** Thursday, December 27, 2018 9:51 PM

**To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Harlow, David <harlow.david@epa.gov>

**Cc:** Ringel, Aaron <ringel.aaron@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>

**Subject:** Fwd: AW SEPW QFR Updates - OAR

Hi Team OAR,

Have you all had a chance to look at the QFRs below to update? We need to get these done ASAP for EPW to ensure the Administrators hearing stays on schedule.

Thank you and have a terrific evening!

Christian R. Palich

Deputy Associate Administrator

Office of Congressional Affairs

C. Personal Privacy / Ex 6

Sent from my iPhone

Begin forwarded message:

**From:** "Ringel, Aaron" <ringel.aaron@epa.gov>

**Date:** December 20, 2018 at 10:49:48 AM EST

**To:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>

**Cc:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Frye, Tony (Robert)" <frye.robert@epa.gov>

**Subject:** AW SEPW QFR Updates - OAR

Team OAR,

AA Wheeler went through the QFRs and had updates he needs made before we can get them submitted. I've pasted the relevant questions for your program office below that need edits and attached the doc for reference.

We need to get these turned in by next Friday so we can move forward with his confirmation hearing. Considering there aren't many substantive changes required, if you can turn these around in next couple days so we can do a final review and get sign off it would be greatly appreciated. Please let myself, Christian, or Tony know if you have any questions.

Best,  
Aaron

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**Aaron E. Ringel**

*Deputy Associate Administrator*

*Office of Congressional & Intergovernmental Relations*

*U.S. Environmental Protection Agency*

W: 202.564.4373

[Ringel.Aaron@epa.gov](mailto:Ringel.Aaron@epa.gov)



**Chairman Barrasso:**

1. The administration has indicated that it plans to issue a Reid Vapor Pressure (RVP) waiver for fuels with ethanol concentrations higher than ten percent. However, in 2011, EPA formally reaffirmed that it did not have the authority to issue a RVP waiver for these fuels. Specifically, EPA stated that: “In sum, the text of section 211(h)(4) [of the Clean Air Act] and this legislative history supports EPA’s interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9 - 10 vol% ethanol.” 76 Fed. Reg. 44406, 44433 (July 25, 2011). Please explain the process by which EPA has re-evaluated its statutory authority and come to a new conclusion.

## Deliberative Process / Ex. 5

2. On June 29, 2018, EPA published a report entitled, “Biofuels and the Environment: Second Triennial Report to Congress.” The report documents how activities associated with biofuel production and use have negatively affected the environment. Specifically, it shows how activities associated with biofuel production and use have reduced air quality, polluted waters, destroyed wildlife habitat and ecosystems, and depleted already stressed aquifers. Has EPA evaluated how a RVP waiver for fuels with more than ten percent ethanol would affect demand for biofuel feedstocks and the use of biofuels, and, in turn, make the impacts to the environment worse? If not, will EPA do so before issuing a RVP waiver for these fuels?

## Deliberative Process / Ex. 5

27. Last year, I asked the Federal Trade Commission (FTC) staff to offer their expertise to EPA to help address RFS RIN market manipulation. I was told by former Administrator Scott Pruitt that on February 8, 2018, EPA and FTC did have a meeting to “initiate dialogue on this matter.”<sup>[1]</sup>

- a. Have there been further conversations with the FTC? If so, please provide further details. If not, why not?

## Deliberative Process / Ex. 5

<sup>[1]</sup> See Scott Pruitt, Administrator Environmental Protection Agency, Responses to Questions for the Record, Hearing Before the U.S. Senate Committee on Environment and Public Works entitled “*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt*” (Jan. 30, 2018).

- b. Please provide any suggestions received from FTC on what data EPA should be collecting to mitigate RIN market manipulation.

## Deliberative Process / Ex. 5

- c. On August 6, 2009, the FTC finalized a rule that prohibited market manipulation in the petroleum industry. So far, EPA has not taken similar steps. Why is market manipulation banned for the wholesale petroleum markets and not for the RFS RIN markets?

## Deliberative Process / Ex. 5

- d. Is the EPA considering a similar rulemaking to prohibit market manipulation in the RFS RIN market? If not, why not? If so, please provide further details and a planned timeline.

## Deliberative Process / Ex. 5

### Senator Inhofe:

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from forest biomass as carbon neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

## Deliberative Process / Ex. 5

### Senator Markey:

51. Late last April, former EPA Administrator Scott Pruitt announced that the EPA will reconsider its methane emissions rule set by the last administration that aimed to combat climate change and protect public health, and simultaneously stated that during the

“reconsideration process,” the EPA would place a 90-day stay on oil and gas companies’ compliance with the rule. Methane is the second-biggest driver of climate change after carbon dioxide. Even though the D.C. Circuit Court of Appeals ruled 2-1 against the EPA’s suspension of the rule, the EPA’s rationale for pursuing this issue still raises significant questions.

- a. What are the existing regulations that would curb the leaking of methane and other harmful pollutants without this rule?

## Deliberative Process / Ex. 5

### Senator Wicker:

81. On July 20, 2018, the U.S. Court of Appeals for the Fourth Circuit vacated and remanded the EPA’s denial of a 2016 petition for small refinery hardship filed by Ergon – West Virginia, Inc., under the Renewable Fuel Standard. What actions is the EPA prepared to take to respond to this court ruling? What is the expected timeline for such actions?

## Deliberative Process / Ex. 5

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## Message

**From:** Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]  
**Sent:** 10/4/2018 6:42:34 PM  
**To:** Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]  
**CC:** Haman, Patricia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0ebb27cd881d41b19a30a491dc3f3f57-phaman]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]  
**Subject:** RE: ADDITIONAL OMB FOLLOW-UP: Administrator Wheeler EPW Hearing QFRs OMB Passback

## Deliberative Process / Ex. 5

**From:** Frye, Tony (Robert)  
**Sent:** Thursday, October 4, 2018 2:21 PM  
**To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Cc:** Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>  
**Subject:** ADDITIONAL OMB FOLLOW-UP: Administrator Wheeler EPW Hearing QFRs OMB Passback

Hello All – Additional follow up from OMB:

22. On March 14, 2018, I wrote with several of my colleagues to former EPA Administrator Scott Pruitt about our deep concern over the reversal of the EPA’s longstanding policy under Section 112 of the Clean Air Act to continuously regulate hazardous air pollution from major industrial sources. We believe revoking the “once in, always in” policy will lead to greater levels of arsenic, lead, mercury, and almost two hundred other air toxic pollutants in communities around the United States. In the letter, we asked that the “once in, always in” policy be reinstated at least until EPA has performed, and received public comment on, a thorough analysis of the expected increases in air toxic pollution and its corresponding impacts on human health.
- a. When former EPA Administrator Scott Pruitt was before the EPW Committee on January 30, 2018, he acknowledged the agency failed to do any analysis before making its ill-advised decision. Please provide all EPA analysis and modeling of the impacts of this policy change, including cancer and other human health effects, environmental effects, effects on state air pollution emissions, cost-benefit analysis, and effects on interstate emissions. If none still exists today, I request that EPA complete such analysis and provide a timeline for completion.
  - b. How many individual facilities in the country were considered a “major source” under Section 112 on January 24, 2018?
  - c. Please identify, as of January 24, 2018, how many of the “major source” facilities identified in question 1(b) had complied with one or more MACT standards with the result being the source no longer emits more than 10 tons per year of any hazardous air pollutant or more than 25 tons per year of any combination of hazardous air pollutants? Please group these facilities by source categories (for example, there were X number of chemical plants meeting a MACT standard that resulted in lower emissions than the major source threshold).

- d. Please provide state-by-state data and a national total for facilities identified in 1(c)
- e. Please provide the potential maximum amount of pollution increases for all 187 hazardous air pollutants as a result of EPA's decision to revoke the "once in, always in" policy.
- f. How much additional particulate matter, ozone, lead and other criteria pollution will be added to the atmosphere as a result of revoking the "once in, always in" policy?
- g. Under the new memorandum, have any major source facilities in the power plant source category requested to be re-designated as an area source? If so, please provide a list of all such facilities, also indicating whether EPA has approved the re-designation.
- h. Under the new memorandum how many major sources facilities, other than facilities in the power plant source category, have asked to be re-designated as an area source? Please provide a list of all facilities, also indicating whether EPA has approved the re-designation.

## Deliberative Process / Ex. 5

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from forest biomass as carbon

neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

# Deliberative Process / Ex. 5

**Tony Frye**  
Special Advisor  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Personal Phone / Ex. 6

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**From:** Gunasekara, Mandy  
**Sent:** Tuesday, October 2, 2018 3:44 PM  
**To:** Schwab, Justin <[Schwab.Justin@epa.gov](mailto:Schwab.Justin@epa.gov)>; Palich, Christian <[palich.christian@epa.gov](mailto:palich.christian@epa.gov)>; Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>; Woods, Clint <[woods.clint@epa.gov](mailto:woods.clint@epa.gov)>  
**Cc:** Haman, Patricia <[Haman.Patricia@epa.gov](mailto:Haman.Patricia@epa.gov)>; Dominguez, Alexander <[dominguez.alexander@epa.gov](mailto:dominguez.alexander@epa.gov)>  
**Subject:** RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

## Attorney Client; Deliberative Process / Ex. 5

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**From:** Schwab, Justin  
**Sent:** Tuesday, October 2, 2018 3:40 PM  
**To:** Palich, Christian <[palich.christian@epa.gov](mailto:palich.christian@epa.gov)>; Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>; Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>; Woods, Clint <[woods.clint@epa.gov](mailto:woods.clint@epa.gov)>  
**Cc:** Haman, Patricia <[Haman.Patricia@epa.gov](mailto:Haman.Patricia@epa.gov)>; Dominguez, Alexander <[dominguez.alexander@epa.gov](mailto:dominguez.alexander@epa.gov)>  
**Subject:** RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

## Attorney Client; Deliberative Process / Ex. 5

## Attorney Client; Deliberative Process / Ex. 5

**From:** Palich, Christian

**Sent:** Tuesday, October 2, 2018 12:58 PM

**To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>

**Cc:** Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>

**Subject:** RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

Thanks Mandy!

### Attorney Client; Deliberative Process / Ex. 5

Christian R. Palich

*Deputy Associate Administrator*

*Office of Congressional & Intergovernmental Affairs*

*U.S. Environmental Protection Agency*

*O: 202.564.4944*

*C: Personal Phone / Ex. 6*

*E: [Palich.Christian@epa.gov](mailto:Palich.Christian@epa.gov)*

**From:** Gunasekara, Mandy

**Sent:** Tuesday, October 2, 2018 10:15 AM

**To:** Frye, Tony (Robert) <frye.robert@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>

**Cc:** Palich, Christian <palich.christian@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>

**Subject:** RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

## Attorney Client; Deliberative Process / Ex. 5

Thanks!

**From:** Frye, Tony (Robert)

**Sent:** Thursday, September 27, 2018 12:29 PM

**To:** Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>

**Cc:** Palich, Christian <palich.christian@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>

**Subject:** Administrator Wheeler EPW Hearing QFRs OMB Passback

Hello Air Team – OMB reviewed Administrator Wheeler’s QFR responses from his EPW hearing on 8.1.2018 and had the following questions and feedback. Let us know if you have any responses or updates by noon tomorrow, 9.28.2018, so we can get them back for review by Administrator Wheeler this weekend. Thank you in advance!

- On June 29, 2018, EPA published a report entitled, “Biofuels and the Environment: Second Triennial Report to Congress.” The report documents how activities associated with biofuel production and use have negatively affected the environment. Specifically, it shows how activities associated with biofuel production and use have reduced air quality, polluted waters, destroyed wildlife habitat and ecosystems,



and depleted already stressed aquifers. Has EPA evaluated how a RVP waiver for fuels with more than ten percent ethanol would affect demand for biofuel feedstocks and the use of biofuels, and, in turn, make the impacts to the environment worse? If not, will EPA do so before issuing a RVP waiver for these fuels?

## Deliberative Process / Ex. 5

3. EPA is currently taking public comment on its proposed renewable fuel volume obligations for 2019 and biomass-based diesel volume obligations for 2020. EPA issued this proposal three days before issuing its second triennial report to Congress on biofuels and the environment.
  - a. How does EPA plan to incorporate the findings of its second triennial report into the final renewable fuel volume obligations for 2019 and biomass-based diesel volume obligations for 2020?

## Deliberative Process / Ex. 5

- b. Will EPA seek to mitigate the impacts to the environment, as documented in the second triennial report, in its final volume obligations for 2019 and 2020, respectively?

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# Deliberative Process / Ex. 5

21. During the development of the “Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-26 Passenger Cars and Light Trucks”, EPA officials met with OMB and NHTSA officials to convey their concerns about the proposal several times. They left numerous documents with OMB officials that are now part of the rulemaking docket<sup>[1]</sup>. These documents indicate that there are significant problems with the model that was used by NHTSA to develop the proposal to freeze fuel economy and greenhouse gas tailpipe standards from 2020-26. One such example is a document titled “Email\_5\_-\_Email\_from\_William\_Charmley\_to\_Chandana\_Achanta\_-\_June\_18,\_2018%20(1).pdf”. This 122 page long document includes a number of PowerPoint presentations EPA made to OMB and NHTSA staff along with additional documentation and analysis.
- a. The document notes that “EPA analysis to date shows significant and fundamental flaws in CAFE model (both the CAFE version and the “GHG version”).... These flaws make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards.” Do you believe that each of these flaws were fully remedied before the rules were proposed? If so, please list the specific remedies that addressed each of EPA’s concerns. If not, will you ensure that all necessary technical input from EPA’s Office of Transportation and Air Quality is incorporated into the final rule in order to ensure that the rule cannot be successfully over-turned in court on grounds that the model on which it is based is significantly or fundamentally flawed?
  - b. One of the main contributors to the NHTSA conclusions that the augural standards would cause thousands of additional deaths is NHTSA’s “consumer choice” module, which asserts that making the fleet more fuel efficient will cause people to keep their less safe, older vehicles for longer, and that this will mean there are more unsafe vehicles on the road (because newer vehicles have more safety technologies). The document states that EPA believed this NHTSA model was flawed, because it predicts an additional 26 million non-existent vehicles would be in the 2016 fleet and 46 million additional non-existent vehicles in the 2030 fleet. For context, this would represent a 15-20% increase in registered vehicles. The document also notes that this problem appeared to be un-remedied several months after EPA first raised it. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
  - c. The document also found that NHTSA’s consumer choice model predicts an unexplained, and apparently fictitious 10-15% increase in vehicle miles traveled (VMT). Specifically, the model somehow predicts people will drive an extra 239 billion miles in 2016 and 302 billion more

<sup>[1]</sup> <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453>

miles in 2030. The increased deaths associated with higher efficiency standards in the NHTSA model are highly correlated to VMT (more driving equals more accidents equals more deaths). It would thus seem that EPA believes that the NHTSA safety numbers are predicated on an entirely fictitious driving scenario. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

- d. The document also notes that NHTSA does not accurately model the manner in which automobile manufacturers trade credits as part of their compliance strategies, observing that NHTSA does not assume that compliance credits are traded between manufacturers' car and truck fleets (which is what manufacturers currently do), and that this has the effect of overestimating compliance costs. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- e. The document observes that NHTSA's model overestimates the costs of particular technologies compared to their actual costs and use in the real world. The model also reportedly selects the most expensive technology packages to meet the standards, which overestimates the most cost-effective ways to do so by \$1-2,000 per vehicle. Do you agree that manufacturers would be more likely to select the most cost-effective set of technologies with which to meet standards, rather than the least cost-effective set of technologies? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- f. The document stated that the NHTSA model omitted the benefits of some fuel-efficient technologies entirely, while others were erroneously inputted into the model. For example, 'start/stop' technology, a technology that causes engines to automatically shut off while vehicles are stopped in traffic (and thus use no fuel), is estimated to have a negative effect on fuel-efficiency, which is simply not plausible. Were these problems remedied in the proposed rule? If so, how? If not, will you ensure that they are remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- g. The document observed that NHTSA's model appears to add vehicle miles travelled in unexplained ways. For example, it observed that as many as 25 billion more miles of driving were predicted in a given year, even when the rebound effect (a measure of how much extra driving consumers are expected to do as a result of having more fuel-efficient vehicles) was set to 0 percent. The document observes that NHTSA's model actually predicts *less* driving when the rebound effect was set to 20 percent (meaning 20% more driving by consumers in more fuel-efficient vehicles would have been included in the model) than when it was kept to 0 percent. This suggests that NHTSA's model is incapable of predicting anything accurately, separate and apart from whether one agrees with its policy premise. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- h. The document states that NHTSA's "Proposed standards are detrimental to safety, rather than beneficial" once NHTSA's modeling errors were corrected. In fact, EPA found that the proposed standards result in "an average increase of 17 fatalities per year in VYs 2036-2045" relative to the current standards. Do you agree with this conclusion? If not, why not?
- i. The document states that the NHTSA model projects that the current standards result in 8,000 fewer new automobiles sold annually in CYs 2021-2032, but that the used vehicle fleet would grow by 512,000 vehicles per year. That means that for every new fuel-efficient vehicle that consumers do not purchase (because NHTSA predicts their costs will be too high), somehow an

additional 60 used vehicles will remain in the fleet. Do you agree that this scenario is simply implausible in the real world, as the EPA document points out? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

- j. In draft comments submitted to OMB on June 29, EPA commented that more than 90% of the net benefits for which the proposed rule to freeze fuel economy and greenhouse gas tailpipe standards takes credit are in fact benefits associated with vehicles manufactured prior to 2021. EPA attributed this to NHTSA's flawed consumer choice model, and questioned whether these could technically be attributable to the actual post-2021 rule. What would the net benefits of the preferred alternative— and for each of the other seven alternatives included in the NPRM — be if the agencies were to compare the costs to the benefits of cars manufactured within the MY 2021-29 cohort timeframe?

## Deliberative Process / Ex. 5

22. On March 14, 2018, I wrote with several of my colleagues to former EPA Administrator Scott Pruitt about our deep concern over the reversal of the EPA's longstanding policy under Section 112 of the Clean Air Act to continuously regulate hazardous air pollution from major industrial sources. We believe revoking the "once in, always in" policy will lead to greater levels of arsenic, lead, mercury, and almost two hundred other air toxic pollutants in communities around the United States. In the letter, we asked that the "once in, always in" policy be reinstated at least until EPA has performed, and received public comment on, a thorough analysis of the expected increases in air toxic pollution and its corresponding impacts on human health.
- a. When former EPA Administrator Scott Pruitt was before the EPW Committee on January 30, 2018, he acknowledged the agency failed to do any analysis before making its ill-advised decision. Please provide all EPA analysis and modeling of the impacts of this policy change, including cancer and other human health effects, environmental effects, effects on state air pollution emissions, cost-benefit analysis, and effects on interstate emissions. If none still exists today, I request that EPA complete such analysis and provide a timeline for completion.
  - b. How many individual facilities in the country were considered a "major source" under Section 112 on January 24, 2018?
  - c. Please identify, as of January 24, 2018, how many of the "major source" facilities identified in question 1(b) had complied with one or more MACT standards with the result being the source no longer emits more than 10 tons per year of any hazardous air pollutant or more than 25 tons per year of any combination of hazardous air pollutants? Please group these facilities by source categories (for example, there were X number of chemical plants meeting a MACT standard that resulted in lower emissions than the major source threshold).
  - d. Please provide state-by-state data and a national total for facilities identified in 1(c)

- e. Please provide the potential maximum amount of pollution increases for all 187 hazardous air pollutants as a result of EPA's decision to revoke the "once in, always in" policy.
- f. How much additional particulate matter, ozone, lead and other criteria pollution will be added to the atmosphere as a result of revoking the "once in, always in" policy?
- g. Under the new memorandum, have any major source facilities in the power plant source category requested to be re-designated as an area source? If so, please provide a list of all such facilities, also indicating whether EPA has approved the re-designation.
- h. Under the new memorandum how many major sources facilities, other than facilities in the power plant source category, have asked to be re-designated as an area source? Please provide a list of all facilities, also indicating whether EPA has approved the re-designation.

## **Deliberative Process / Ex. 5**

## **Deliberative Process / Ex. 5**

25. During the August 1, 2018 EPW hearing, you fielded several questions from my colleagues on the Renewable Fuel Standard (RFS). Several times you mentioned that under your leadership, EPA would focus more on transparency when it comes to implementing the RFS program. This is welcome news

since I've tried to get EPA to take this step for years. However, I am concerned that you may only be focused on transparency when it comes to the small refinery waiver process and not the entire program. I remain concerned about the volatility in the RFS compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market, and believe market transparency is a big part of the solution.

- a. In your answers, you talked about creating a dashboard –without disclosing proprietary information – on who is getting the small refinery waivers and why. Can you discuss further what this dashboard may look like and a timeline on when it may be released?

## **Deliberative Process / Ex. 5**

- b. The State of California has created a dashboard to provide weekly, monthly, quarterly and annually trading data for its own renewable fuel program. After talking to many stakeholders involved in that process, it seems that California's renewable fuel trading dashboard has been able to provide valuable insight into trading and helped reduced market volatility. EPA could implement something similar for the RFS RIN trading market. Is EPA considering a RIN dashboard that provides the public weekly, quarterly and annual RIN trading data? If not, why not?

## **Deliberative Process / Ex. 5**

- c. What further transparency measures is the EPA considering regarding the RFS program?

## **Deliberative Process / Ex. 5**

## Deliberative Process / Ex. 5

32. Administrator Wheeler, during questioning, I discussed with you small refinery exemptions awarded to petitioners for the reason of disproportionate economic hardship. When EPA conducts its analysis to determine disproportionate economic hardship, please clarify if the EPA compares the high cost of compliance to only small refiners (those that produce 75,000 barrels of crude per day) or if the EPA compares the high cost of compliance to the entire refining industry.

## Deliberative Process / Ex. 5

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from forest biomass as carbon neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

## Deliberative Process / Ex. 5

65. As you know, many of former Administrator Pruitt's proposed rulemakings have generated lawsuits from outside groups due to their questionable legality. You recognized the questionable legality of at least one of these rules in reversing former Administrator Pruitt's decision to lift the sales limits on so

called “glider trucks.” Given that many of former Administrator Pruitt’s rules and proposed rulemakings were based on the same questionable legal ground as the glider trucks rule, please describe your plan, including a timeline, for withdrawing all other proposed rulemakings signed by former Administrator Pruitt.

# Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

## Attorney Client; Deliberative Process / Ex. 5

**Tony Frye**  
Special Advisor  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: **Personal Phone / Ex. 6**

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## Message

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 8/21/2018 12:09:00 PM  
**To:** Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]  
**CC:** Porter, Amy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a3c7dfbb2e445a7a6d37aabb73d06b-APorte02]  
**Subject:** RE: Draft responses to QFRs

Got it - will send to Caroline E now.

-----Original Message-----

**From:** Kelley, Rosemarie  
**Sent:** Monday, August 20, 2018 6:08 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Draft responses to QFRs

Attached is a clean and redline version of my comments.

Rosemarie

-----Original Message-----

**From:** Fogarty, Johnpc  
**Sent:** Monday, August 20, 2018 5:10 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Draft responses to QFRs

Here's the draft answers to the QFRs (I'm assuming you'd like to review before we send on to Caroline E). These questions are actually plowing a lot of old ground, as it turns out, so we're recycling a fair amount in the answers. Here's a quick roadmap:

- The answer to the question from Carper on gliders (Q18) is taken from what we said in our brief on the challenge to the glider NAA.
- The response to the Markey questions on the info request memo (Q54.a, b & d) is new, which Amy's reviewed.
- We are not drafting answers for Q54.c & g (Caroline E is going to get with Susan on those).
- The question on NOV's (Q54.e) is nearly verbatim from what Markey had asked earlier, as is the answer (from last January).
- The question on us asking for delays of any CDs (Q54.f) is new, with a short answer.
- The question on lowering penalties/withdrawing cases (Q54.h) is also a recycled one from last January as well, as is the answer. Waiting on OC to confirm that the numbers are still accurate, and that we don't yet have data on anything in 2018.
- The Markey questions on DTE (Q56.d & e) are new. Phil has reviewed the answers.